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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES MURTAGH, M.D.,
an individual,

Plaintiff,

v.

DAVID PARDO,
an individual;
and DOES 1- 10 inclusive

and

AUTOMATTIC, Inc.,
dba WordPress
a corporation

and

MARKMONITOR, *a corporation*

Defendants

) CASE NO.

)

) **PLAINTIFF'S COMPLAINT FOR**
) **DAMAGES AND EQUITABLE**
) **RELIEF:**

)

) **1. TRADEMARK/SERVICEMARK**
) **INFRINGEMENT**

) (28 U.S.C. § 1114)

)

) **2. FALSE DESIGNATION OF**
) **ORIGEN**

) (28 U.S.C. § 1125(a)(1)(A))

)

) **3. CYBERPIRACY**

) (28 U.S.C. § 1125(D))

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Plaintiff, DR. JAMES MURTAGH, (hereinafter "Plaintiff") alleges as follows:

PARTIES

1. Plaintiff, DR. JAMES MURTAGH, MD, is an individual residing in Los Angeles, CA 90048.

2. Defendant, DAVID PARDO is an attorney and individual residing in New Mexico.

3. Defendant AUTOMATTIC, INC., dba WordPress: (a) has its principal place of business in San Francisco, CA; (b) is the listed registrant organization and domain name administrator for the website <jamesmurtaghmd.wordpress.com>.

4. Defendant MARKMONITOR: (a) has its principal place of business in San Francisco, CA; (b) is the listed registrar of the domain name <jamesmurtaghmd.wordpress.com>.

JURISDICTION AND VENUE

5. This Court has jurisdiction over plaintiff Dr. James Murtagh's claims pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, 28 U.S.C. § 2201.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rising to the claims occurred in this district.

FACTUAL BACKGROUND

7. Plaintiff Dr. James Murtagh, MD is an accomplished medical doctor and researcher and public health advocate certified in internal, pulmonary, sleep medicine and licensed in 12 states. Dr. Murtagh is a prolific academic medical author and also a member of the Author's Guild. Plaintiff provides medical services as an independent contractor ("locum tenens physician") who offers his medical services to hospitals and clinics under his own name, Dr. James Murtagh, M.D.

8. Defendant Pardo is a Massachusetts licensed attorney currently residing in New Mexico. Defendant Pardo and plaintiff established an attorney-client relationship in June, 2012.

9. Defendant Pardo, in partnership with Mr. Clark Baker whom defendant knew had adverse interests to plaintiff, created and operated a

1 website entitled <*jamesmurtaghmd.com*> in November of 2012 that was
 2 never authorized by plaintiff and for the purpose of disparaging plaintiff's
 3 medical practice.

4 10. Defendant MarkMonitor is listed as the registrar of the domain
 5 name <*jamesmurtaghmd.wordpress.com*>. This domain name containing
 6 plaintiff's professional name is one of several websites that are also
 7 variations of plaintiff's name and variations of the original website created
 8 by defendant Pardo. These websites have different registrars and
 9 registrants.

10 11. Defendant AUTOMATTIC, dba WordPress (hereinafter
 11 "WordPress"), is the named registrant of the domain name
 12 <*jamesmurtaghmd.wordpress.com*>. Typically, the owner of a website is
 13 also the registrant of that website. However, defendant WordPress offers a
 14 service to third parties which adds <*wordpress.com*> to a name chosen by
 15 the third party, e.g. <*cocacola.wordpress.com*>.

16 12. Consequently, for every domain ending in <*wordpress.com*>
 17 defendant WordPress assumes the role of the registrant, or nominal owner,
 18 of the site. The Internet Corporation for Assigned Names and Numbers
 19 (hereinafter "ICANN") WhoIs database that lists owners of websites lists
 20 WordPress.com as the registered owner under the name "Automattic."
 21 According to ICANN, "WHOIS Lookup gives you the ability to lookup any
 22 generic domains, such as 'icann.org' to find out the registered domain
 23 owner." *whois.icann.org/en*.

24 ***Defendant Attorney David Pardo Betrays Former Client***
 25 ***Plaintiff Dr. James Murtagh, MD To Mr. Clark Baker, The***
 26 ***Very Person Injuring Plaintiff***

27 13. Defendant Pardo advertises his services to people who expose
 28 corruption and fraud. Plaintiff Dr. Murtagh is a major public policy health

1 advocate who approached Defendant Pardo, an attorney, for legal services,
2 and a confidential relationship was created.

3 14. That contact was determined by the Massachusetts state bar to
4 create a prospective attorney-client relationship between plaintiff and
5 defendant Pardo.

6 15. The Superior Court of Los Angeles found that documents
7 obtained by defendant Pardo from plaintiff were confidential and privileged
8 documents belonging to plaintiff.

9 16. Plaintiff sought the assistance of defendant Pardo because of a
10 campaign by a Mr. Clark Baker to destroy, disrupt and disparage plaintiff's
11 career and livelihood as a medical professional.

12 17. Mr. Baker contacts lawyers and assistants of plaintiff as part of
13 his campaign against plaintiff.

14 18. On or around 2012, Mr. Baker recruited Mr. Pardo and
15 convinced defendant Pardo to join his campaign against plaintiff.

16 19. Mr. Baker created an organization called the Office for Medical
17 and Scientific Justice (hereinafter "OMSJ") in 2009 that is the original
18 named registrant for the infringing website <*jamesmurtaghmd.com*>.¹
19 Defendant Pardo, Mr. Baker, and OMSJ are all responsible for creating the
20 website in November 2012. Defendant and partners Clark Baker and OMSJ
21 have transferred the original website to multiple domain names that
22 incorporate plaintiff's personal and professional name.
23

24 ¹ The original website <*jamesmurtaghmd.com*> was ordered transferred to
25 plaintiff by an arbitration panel on June 26, 2014 but a variation of the
26 exact same website using a variation of plaintiff's name is currently
27 operating as <*jamesmurtaghmd.wordpress.com*>. There are similar
28 websites also containing slight variations of plaintiff's domain name as
recognized by the arbitration panel as belonging solely to the plaintiff.

***Defendant Pardo Joins Attack Campaign On
Plaintiff Dr. James Murtagh, M.D.***

20. Defendant Pardo's partner, Mr. Clark Baker, met plaintiff Dr. Murtagh after Mr. Baker was hired and paid as a private investigator by another doctor involved in an organizational dispute with plaintiff Dr. Murtagh. This dispute was based on Dr. Murtagh's opposition to the doctor who hired Mr. Baker inviting HIV/AIDS denialists to a United States Congressional hearing.

21. Since this initial meeting in Congress in 2009, Mr. Baker has proceeded to engage in a protracted and full time campaign to destroy Dr. Murtagh's ability to practice medicine. Mr. Baker alleges that his reason is that plaintiff Dr. Murtagh is somehow part of a medical-pharmaceutical conspiracy to promote the use of pharmaceutical medicine such as anti-retroviral drugs to treat HIV/AIDS. Mr. Baker's allegation is false.

22. Both as a matter of public policy and in his practice of medicine, plaintiff Dr. Murtagh does support the provision of proven life saving medication to patients diagnosed with HIV/AIDS as does practically every physician. This is required of doctors by the Hippocratic Oath and is considered to be well established orthodox and proven treatment by the medical establishment. However, plaintiff is not a specialist in HIV/AIDS and receives no money or endorsement from pharmaceutical companies.

23. In September of 2012, defendant Pardo and Mr. Baker as part of their attack on plaintiff started a website <*jamesmurtaghmd.com*> to post malicious material about plaintiff contained in a legal dispute between plaintiff and a former employer, Emory University hospital, to post defamatory material about plaintiff, to track plaintiff and to encourage

1 others to report negative material about plaintiff. On the website, plaintiff
2 is presented as if he were a fugitive from justice.

3 24. Defendant Pardo helped establish and create links to the OMSJ
4 website through <*jamesmurtaghmd.com*> and other related sites. Through
5 OMSJ's federal 501(c)(3) designation hundreds of thousands of dollars
6 annually, including over \$400,000 in one recent year, have been raised to
7 fund private investigation and other activities based on the belief that the
8 HIV virus does not cause AIDS, that diagnostic tests showing such results
9 are products of a conspiracy between doctors and pharmaceutical
10 companies, and that patients should not take medicine such as anti-
11 retroviral drugs to treat HIV/AIDS. This is commonly referred to as
12 "HIV/AIDS denialism." Mr. Clark and defendant Pardo have targeted
13 plaintiff in this campaign which helps raise the revenue OMSJ receives.

14 25. Mr. Baker and Defendant Pardo's smear and harassment
15 campaign includes

- 16 a. *surveillance and unauthorized contact with Dr.*
17 *Murtagh,*
- 18 b. *surveillance of Dr. Murtagh's long-term female*
19 *companion,*
- 20 c. *unwanted communication and contact with Dr.*
21 *Murtagh's family,*
- 22 d. *solicitation of Dr. Murtagh's confidential papers,*
23 *lawyers with whom plaintiff has conferred and*
24 *assistants,*
- 25 e. *obtaining confidential and privileged documents*
26 *belonging to plaintiff from former lawyer defendant*
27 *Pardo,*

- 1 f. *communication with plaintiff stating that Mr. Baker*
2 *“hoped” plaintiff would not kill himself so that Mr. Baker*
3 *could continue to torment and mock him particularly by*
4 *way of defendant Pardo’s unauthorized website using*
5 *plaintiff’s name.*
- 6 g. *Attempts by Mr. Baker to get plaintiff’s license taken*
7 *away based on unsolicited and unsubstantiated*
8 *complaints to medical boards referring them to the*
9 *unauthorized website created by Mr. Pardo.*

10 26. Mr. Baker has also worked in collaboration with Emory
11 Hospital, a former employer of plaintiff, who reached an agreement with
12 plaintiff regarding plaintiff’s claims of fraud and corruption on the part of
13 the hospital. Mr. Baker has provided information regarding his surveillance
14 of plaintiff to Emory Hospital and its lawyers.

15 27. Defendant Pardo and Mr. Baker have gone so far as to
16 systematically attempt to locate (and when located contact) past, present
17 and potentially future employers of plaintiff Dr. Murtagh in an effort to
18 prevent hospitals from hiring (and if hired to fire) Dr. Murtagh. Not
19 wanting patients or staff to see adverse publicity, on several occasions
20 hospitals have ended contracts with plaintiff with some specifically citing
21 the website created by defendant Pardo under plaintiff’s name.

22 28. For example, defendant Pardo and Mr. Baker’s website under
23 the domain name *<jamesmurtaghmd.com>* was sent to federal hospitals
24 including the Veterans Administration and Indian Health Service hospitals.
25 Plaintiff was questioned specifically about *<jamesmurtaghmd.com>*.

26 29. As a result of these activities, plaintiff Dr. Murtagh filed a State
27 of California lawsuit based on illegal contact with employers and patients
28 for claims including tortious interference and intentional intrusion into

1 personal affairs against Mr. Baker in November of 2013. *Murtagh v. Baker*,
2 Superior Court of Los Angeles, Case No. BC 527716.

3 30. Plaintiff discovered *after* filing the lawsuit that defendant
4 Pardo, his former attorney, was actively assisting Mr. Baker in the internet
5 harassment campaign and had *actually created the website using*
6 *plaintiff's name as a domain name*.

7 31. The Superior Court of Los Angeles, California declared
8 documents obtained by defendant Pardo as a result of attorney client
9 communication with plaintiff that were transferred from defendant Pardo
10 to Mr. Baker are privileged and/or confidential. These documents were
11 supposed to be removed from the internet.

12 32. Mr. Baker and defendant Pardo failed to do this leading to the
13 filing of a motion for sanctions.

14 33. The Court previously has awarded substantial fees and
15 sanctions against Mr. Baker and his attorneys for other misconduct.

16 34. On June 29th, Mr. Baker and OMSJ jointly filed bankruptcy
17 after several adverse judgments entered by the State Court resulting in an
18 automatic stay of current litigation against Mr. Baker and OMSJ.

19 ***Defendant Pardo's Unauthorized And Illegal Use Of Plaintiff's***
20 ***Professional Name, James Murtagh, Md, As A Domain Name***

21 35. The major tool that defendant Pardo uses in his campaign to
22 destroy Dr. Murtagh's ability to practice medicine is the internet.
23 Defendant misappropriated Dr. Murtagh's name by using plaintiff's own
24 name as a domain name.

25 36. Before being transferred to plaintiff as a result of the arbitration
26 panel's ruling, defendant Pardo's website under the domain name
27 <jamesmurtaghmd.com> was used by defendant and Mr. Baker to directly
28

1 and indirectly steer internet traffic for hospitals, medical recruiters and
 2 patients to that domain name. Defendant Pardo's websites bait and switch
 3 people looking for legitimate information regarding Dr. Murtagh's services
 4 to the malicious websites created by defendant.

5 37. Defendant Pardo and Mr. Baker have promoted websites
 6 containing <jamesmurtaghmd> through arduous and detailed
 7 manipulation of hyper-tags and search engines to publicize the websites. As
 8 a result of defendant's artificial manipulation, search engines list the
 9 infringing domain names as top searches for anyone seeking information
 10 about Dr. Murtagh's professional services.

11 38. Upon information and belief, Mr. Baker and defendant Pardo
 12 also track traffic to the website as one means to determine where plaintiff
 13 works. Once found, defendant Pardo contacts said hospital in an attempt to
 14 get plaintiff fired.

15
 16 ***Mandatory Arbitration Panel Transfers Domain Name***
 17 ***<jamesmurtaghmd> to Plaintiff Dr. James Murtagh, M.D.***

18 39. The Internet Corporation for Assigned Names and Numbers
 19 (ICANN) is the primary management mechanism for the global Internet
 20 and manages the domain name system. *Trademark Practice Throughout*
 21 *the World*, § 30:19.

22 40. ICANN is responsible for management of the domain name
 23 system and has contracts with dozens of registrars that assign domain
 24 names:

25 [T]hese registrars form the Internet Council of Registrars (CORE)
 26 and operate under the CORE Memorandum of Understanding
 27 (CORE-MoU). Under the CORE-MoU, each registrar is mandated to
 28 maintain its own WHOIS database. This database gives information

1 about the registrant of each domain name. Trademark owners and
2 other interested parties use this information as one method to
3 monitor their rights on the Internet.

4 *Trademark Practice Throughout the World*, § 30:20.

5 41. By agreement, a person or entity that registers a domain name
6 under the ICANN system is required to submit to arbitration under
7 ICANN's Uniform Dispute Resolution Policy (UDRP) if a trademark or
8 servicemark owner files a complaint.

9 42. Plaintiff Dr. Murtagh submitted a complaint for mandatory
10 arbitration of his rights to his name as a domain name and transfer of that
11 name on May 1, 2014.

12 43. A Uniform Domain Name Dispute Resolution Policy (UDRP)
13 arbitration panel found that plaintiff Dr. James Murtagh, MD had
14 ownership and trademark rights to <jamesmurtaghmd.com>. *Exhibit 1*.
15 That domain name was transferred to plaintiff as plaintiff's sole and
16 undivided intellectual property.

17 44. Upon information and belief, defendant Pardo, either directly
18 or in concert with Clark Baker, creates new sites using slight variations on
19 plaintiff's name in violation of the arbitration panel's order.

20 45. Defendant Pardo and Mr. Clark Baker use variations of
21 plaintiff's domain name as part of a campaign to attack him based on Dr.
22 Murtagh's support for scientifically and medically accepted and authorized
23 treatment of HIV/AIDS. Mr. Clark Baker owns and operates the
24 organization called OMSJ dedicated to disputing the link between the HIV
25 virus and AIDS and named entity registering the infringing domain name.
26
27
28

After Losing in Arbitration, Defendant Pardo and Mr. Baker Transfer Website to New Domain Names Also Using and Misappropriating Plaintiff's Name

46. The WIPO panel also held that Mr. Clark Baker and defendant Pardo's misappropriation of the domain name <jamesmurtaghmd.com> was being used in an intentional campaign to misdirect internet users:

D. Registered and Used in Bad Faith

Though not within the non-exclusive examples of evidence of bad faith set out in paragraph 4(b) of the Policy, the Respondent's intentionally misleading the public by holding himself out via the disputed domain name as the Complainant constitutes bad faith in registration and use of the disputed domain name.

James Murtagh M.D. v. Clark Baker, Office of Medical and Scientific Justice, Case No. D2014-0711, Administrative Panel Decision, World Intellectual Property Organization, Page 7. Pursuant to the arbitration panel decision, the domain name <jamesmurtaghmd.com> was transferred to plaintiff.

47. After losing the arbitration decision, Clark Baker and OMSJ then filed an appeal of that decision to this Court on July 16, 2014. *Office of Medical and Scientific Justice, Inc. v. James Murtagh, M.D.*, US District Court for Central District of California, No. 2:14cv05538. However, Clark Baker and OMSJ voluntarily withdrew their alleged claim to the domain name on August 19th, 2014.

48. Despite the arbitration decision and in total contempt of it, defendant Pardo along with Mr. Baker and OMSJ, upon information and belief, continued to register websites with slight variations of Dr. Murtagh's name in bad faith including:

- a. *jamesmurtaghmd.wordpress.com*
- b. *www.jamesmurtaghmdtruth.com/*
- c. *au.eupse.co/g_murtough/*
- d. *zhanl.com/d-www.jamesmurtaghmd.com-dab/*
- e. *https://www.aihitdata.com/company/016EDF4A/.../people*
- f. *www.cyclopaedia.info/wiki/Saint-Murtagh*
- g. *www.aboutus.org/JamesMurtaghMd.com*

Additional websites including both plaintiff's name as part of a domain name plus an unauthorized photo of plaintiff Dr. James Murtagh:

- h. *http://www.propagandists.org/propagandists/james-murtagh-court-documents/*
- i. *https://www.aihitdata.com/company/016EDF4A/.../people*

49. On April 27, 2015, the Massachusetts State Bar ordered defendant Pardo to cease and desist from publishing said material and from creating and maintaining websites in opposition to plaintiff. As part of that agreement, defendant Pardo was required to takedown the website he co-created with Mr. Baker and variations of that website.

50. The original website created by defendant Pardo is still available under the domain name *<jamesmurtaghmd.wordpress.com>*.

***Defendant Wordpress As Domain Name Registrant And
Owner Of <Jamesmurtaghmd.Wordpress.Com>***

51. Defendant MarkMonitor is the listed registrar.

52. Defendant Automattic, Inc. operates a service called WordPress for creating and hosting websites.

53. Defendant Automattic adds the signifier <wordpress.com> to sites that it hosts for third parties.

54. Defendant Automattic is listed as the registrant for <www.jamesmurtaghmd.wordpress.com>. Although the ICANN policy and agreement is designed to allow trademark owners to determine the identity of persons or entities responsible for the name and content of infringing sites, the WordPress customer agreements essentially create anonymous users with WordPress itself as the nominal named registrant.

55. Under ICANN rules, WordPress is considered to be the owner of the website.

56. Plaintiff, by counsel, sent a notice of request for takedown to defendants WordPress and MarkMonitor by email and mail. *Exhibits 2, 3.*

57. Defendant Automattic refuses to disable or transfer the domain name <jamesmurtaghmd.wordpress.com> stating that plaintiff has the option of filing yet another domain name complaint to another arbitration panel.

58. This is impractical given the number of different infringing websites generated, or that can be generated, by defendant Pardo, Mr. Baker or other partners. This is why substantially similar domain names to plaintiff Dr. James Murtagh, M.D.'s domain name <jamesmurtaghmd> are also protected under the Lanham Act.

59. By contrast to registrant defendant MarkMonitor and defendant nominal owner Automattic, the registrant and owner of a similar website with the domain name <jamesmurtaghtruth.com> disabled that website after reviewing the arbitration panel's decision transferring the domain name <jamesmurtaghmd.com> to plaintiff.

***Anonymous Posting Of The Same Website
Under Variation Of Plaintiff's Name***

60. Including <jamesmurtaghmd.wordpress.com> and <jamesmurtaghmdtruth.com>, Mr. Baker and defendant Pardo have created and maintained multiple websites containing plaintiff's domain name under anonymous registration. Not all domain names are linked to an active website. However, the websites with content are versions of *the exact same original website* created by defendant Pardo where defendant's partner OMSJ was previously listed as the owner during the arbitration proceeding, include

- a. jamesmurtaghmd.wordpress.com
- b. www.jamesmurtaghmdtruth.com/
- c. http://www.propagandists.org/propagandists/james-murtagh-court-documents/

61. As a result of defendant's new websites, Dr. Murtagh has suffered significant damage to his ability to practice medicine and obtain new employment. Defendant's websites attract coworkers and patients redirects them to the infringing websites for the purpose of disparaging plaintiff's practice as a physician.

62. The continued presence of these websites poses a significant threat to plaintiff's continued livelihood and ability to promote his own services in a positive manner.

COUNT ONE
FEDERAL TRADEMARK INFRINGEMENT
15 U.S.C. § 1114(1)

63. Plaintiff repeats and realleges facts, judicial decisions, and law stated in preceding paragraphs 1 through 62 and other subsequent allegations as if fully stated herein.

64. Plaintiff James Murtagh, M.D. has the right to the exclusive use his name as a domain name. It is distinctive and has been used widely by plaintiff in his practice and as an author. The domain name *<jamesmurtaghmd.com>* was transferred to him as a result of mandatory arbitration.

65. Operation of the infringing websites using variations of plaintiff's name as domain names are likely to cause confusion, mistake or deception as to the source or sponsorship or authorization of websites containing plaintiff's name and likeness. Indeed, the arbitration panel found that a major reason for the registration and use of plaintiff's name as a domain name was to bait and switch the public which includes clients and patients of plaintiff. The arbitration panel found the use of *<jamesmurtaghmd.com>* by defendant Pardo and Mr. Baker is explicitly misleading.

66. The continuing publication of websites containing variations plaintiff's name as a domain name violates the arbitration panel decision and will continue to falsely lead the public to be artificially drawn to those websites as representative or authorized by plaintiff. The websites using plaintiff's name as a domain name falsely represent the websites as being legitimately connected with and/or authorized by plaintiff and place beyond plaintiff's control his own reputation and ability to control use of his name to provide information or services.

1 67. This is an exceptional case. The misuse of the domain names is
 2 willful and deliberate and have harmed plaintiff in an amount to be
 3 determined at trial. Such damage will increase unless defendants are
 4 enjoined from their wrongful actions. Defendants' infringement of his
 5 domain name is willful, intended to reap the benefits of the good will of
 6 plaintiff, and violates Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

7
 8 **COUNT TWO**
 9 **FALSE DESIGNATION OF ORIGIN**
 10 **15 U.S.C. § 1125(a)**

11 68. Plaintiff repeats and realleges facts, judicial decisions, and law
 12 stated in preceding paragraphs 1 through 67 and other subsequent
 13 allegations as if fully stated herein.

14 69. Defendants use of the name <jamesmurtaghmd> and
 15 variations thereof as domain names are identical, related and/or
 16 substantially similar to plaintiff's actual name under which plaintiff
 17 provides medical services and constitutes a false designation of origin and a
 18 misleading representation as to the authorization and sponsorship of
 19 Defendants' websites. Defendants use of websites containing plaintiff's
 20 name is likely to cause confusion, mistake, or deception as to the source of
 21 Defendants' services and is likely to create the false impression during a
 22 search that the website is authorized, sponsored, endorsed, licensed by, or
 23 affiliated with plaintiff.

24 70. Defendant's unlawful activities reflect adversely on Plaintiff Dr.
 25 Murtagh because potential employers and patients seeking information
 26 about plaintiff's services are mis-directed to websites that plaintiff does not
 27 control but that use his name. Plaintiff's efforts to provide valuable and
 28

1 needed medical services and his reputation will be hampered, resulting in
2 loss of income and availability of much needed medical services.

3 71. Defendants' conduct has caused and is causing immediate and
4 irreparable injury to Counterclaim-Plaintiff and will continue both to
5 damage Plaintiff and deceive the public unless enjoined by this Court.
6 Plaintiff has no adequate remedy at law.

7 72. Defendants' actions are willful and deliberate, constitute unfair
8 competition, and are intended to reap the benefit of the goodwill of plaintiff
9 in violation of Section 43(a)(1)(A) of the Lanham Act. *15 U.S.C. §*
10 *1125(a)(1)(A)*.

11
12 **COUNT THREE**
13 **CYBERPIRACY**
14 **15 U.S.C. § 1125(D)**

15 73. Plaintiff repeats and realleges facts, judicial decisions, and law
16 stated in preceding paragraphs 1 through 72 and other subsequent
17 allegations as if fully stated herein.

18 74. Plaintiff is a recognized author and academic researcher and
19 has intellectual property rights to the use of his name as a domain name in
20 connection with the provision of medical services and commentary
21 regarding medicine as confirmed in arbitration.

22 75. Websites registered and using the domain name
23 *<jamesmurtaghmd>* for use in connection with a campaign to attack Dr.
24 Murtagh and promote a different health care agenda *denying* standard
25 treatments for HIV/AIDS is being done in bad faith and with an intent to
26 profit from use of the domain name.

27 76. Defendants have also profited commercially from their
28 campaign and the use of plaintiff's name as a domain name.

77. These websites are being registered under plaintiff's name without authorization, with full knowledge of plaintiff's rights to his name, and in bad faith as found in mandatory arbitration.

78. These websites are identical to plaintiff's name in its use of the his name as dominant term in websites and defendants create variations that are confusingly similar in overall commercial impression, to plaintiff's name.

79. The unauthorized registration and use of the *name* *<jamesmurtaghmd>* and variations as domain names has harmed the goodwill of plaintiff's name for defendant's commercial gain, and creates a likelihood of confusion as to the source, sponsorship, affiliation, and endorsement of the infringing site in search engines and impermissibly generating traffic and attention to these infringing sites.

80. The unauthorized registration and use of the infringing domain names is causing immediate and irreparable injury to plaintiff and to the good will and reputation of his name and will continue to damage plaintiff unless the Court enjoins such use, transfers the domain name <*jamesmurtaghmd.wordpress.com*> to plaintiff, and enjoins defendants from further registration of domain names containing plaintiff's name.

81. These acts and conduct constitute cyberprivacy in violation of the Anticybersquatting Consumer Protection Act, Section 43(d) of the Lanham Act. 15 U.S.C. § 1125(d).

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff Dr. James Murtagh, MD respectfully requests that the Court enter judgment against defendants PARDO and AUTOMATTIC and MARKMONITOR granting the following relief:

- 1 A. For a declaratory judgment confirming the arbitration
2 decision finding that plaintiff Dr. James Murtagh, MD has
3 intellectual property rights to the domain name
4 <*jamesmurtaghmd.com*> and finding that this right
5 includes the right to variations of that name.
- 6 B. For a Preliminary and Permanent Injunction barring
7 defendants and their officers, agents, servants, employees,
8 and all persons acting on defendant's behalf from
9 engaging in any use of the designation
10 <*jamesmurtaghmd*> or any other name or mark
11 confusingly similar to <*jamesmurtaghmd*>, either alone
12 or in combination with other words or symbols, as a part
13 of any trademark, service mark, trade name, corporate
14 name, assumed name, domain name, Web site name, e-
15 mail address, or in any other manner in connection with
16 plaintiff and his services;
- 17 B. Award damages (including treble damages), costs, and
18 attorney's fees to *Dr. James Murtagh, MD* on each of its
19 claims in an amount to be determined at trial, including
20 but not limited to damages pursuant to 15 U.S.C.A. §
21 1117(a);
- 22 C. For an Injunction ordering defendants, pursuant to 15
23 U.S.C.A. § 1118, to disable, destroy and relinquish all
24 websites using the name <*jamesmurtaghmd*>, either
25 alone or in combination with other words or symbols, that
26 is published, even if not disseminated publicly;
- 27 D. Award the recovery of defendant's profits to Dr. James
28 Murtagh, MD under 15 U.S.C.A. § 1117(a);

- 1 E. Award the recovery of statutory damages for cyberpiracy
2 to Dr. James Murtagh, MD under 15 U.S.C. §
3 1125(d)(1)(A).
4 F. Declare this case exceptional and award Dr. James
5 Murtagh his reasonable attorney's fees and the costs of
6 this action under 15 U.S.C.A. § 1117(a); and
7 G. Provide such other and further relief to the Court may
8 deem just and proper under the circumstances.
9

10 DATED: JULY 10, 2015

11 Respectfully submitted

12
13 By: /s/ Steven D. Smith
14 Counsel for Plaintiff,
15 James D. Murtagh, M.D.
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